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Railroad Consolidation

Committee Report

THIS REPORT is in order for consideration by the Chamber's next annual meeting.

IN PLACING this report before the membership the Board of Directors has taken no action, either for itself or for the Chamber, upon the report or any recommendation in it. Only the vote of the member organizations through their delegates at the annual meeting or by referendum can commit the Chamber for or against any of the propositions in the report, and until such vote is taken the report rests solely upon the authority of the committee presenting it.



FEBRUARY, 1936
CHAMBER OF COMMERCE OF THE UNITED STATES
WASHINGTON, D. C.

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Special Committee on Railroad Consolidation

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Railroad Consolidation

To the Board of Directors:

YOUR COMMITTEE, appointed to consider the question of railroad consolidations, submits the following report:

National Transportation Policies

AS ONE of the major branches of business, furnishing indispensable and increasingly efficient transportation service, utilizing vast quantities of the products of agriculture and industry, providing steady employment to an army of workers and affording an important and reliable source of tax income to the various units of government, the railroads of the United States have long been regarded by the general public as institutions of inexhaustible strength which could be counted on to survive and continue the performance of these functions regardless of conditions.

In the decade following the world war, however, despite the apparent state of prosperity, students of transportation, including many railroad executives, began to point out dangers that appeared to be developing in the railroad situation and the need for more enlightened government policies in dealing with their problems. Emphasis was laid particularly upon the need for relief from unnecessary and hampering interference with proper responsibilities of management and upon the need for equity in government treatment of all competing forms of transportation.

That the seriousness of these matters was not fully realized seems clear from the repeated failures of Congress to take action on remedial measures that were brought before it. In fact, not until the depression made the situation extremely acute were some of the necessary measures finally adopted by Congress in 1933 and 1935, notably the repeal of the "recapture clause" under which even railroads in receivership were being held liable for "excess" earnings of earlier years, the modification of the elaborate valuation requirements which had proved to be unworkable and costly, and legislation for regulation of motor carriers in interstate commerce.

As Federal Coordinator of Transportation Eastman has pointed out in his reports, there is clearly need for further steps to correct other obsolete and unwise features of existing railroad regulation and to

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complete the necessary legislation to provide fair and equitable conditions of competition among the different forms of transportation. The Chamber's membership has recognized these needs in a number of declarations adopted within the past three years recommending specific steps for dealing with the more urgent problems.

Railroad consolidation, which merits a prominent place in this country's transportation program, is a process which could not well be carried out under conditions of acute depression. With relative values of different properties changing rapidly and actual values in many cases impracticable even to estimate, little progress in consolidation was to be expected. Now, however, with general business conditions improving, it is in order to examine carefully the existing public policies in this field and see what steps should be recommended to make possible realization of the benefits to the railroads and the public that can be secured through appropriate consolidations.

Importance of Railroad Consolidation

THE Chamber's membership has long recognized in repeated declarations that proper consolidations of railroads offer important opportunities for improvement of the situation of the railroads and their effectiveness as the central part of the country's whole transportation system. There has been a great variety of consolidation plans and a wide range of estimates as to the savings in dollars per annum which could be made thereby in addition to improvement in efficiency of transportation service.

While some of the plans recently proposed are so sweeping in character as to be of doubtful desirability or practicability from the viewpoint of carriers, shippers and the general public, and while some of the estimates of savings have undoubtedly exceeded the possibilities, your Committee believes that economies and improvements to be gained by reasonable and proper consolidations, worked out in a manner suited to the actual needs of each situation, will ultimately be effective and will be of benefit to all interests concerned.

It should be emphasized that the benefits to be gained will come not only through elimination of duplicatory and wasteful service or other direct savings in expense. On the contrary, your Committee attaches even greater importance to the opportunities which a settlement of consolidation problems will open up for railroads to improve and expand their services by adoption of the most modern equipment

and methods, including all economic use of motor, water (when not prohibited by law), and air transport as auxiliary to their rail service, or in replacement thereof where such substitution is advisable. In this day, therefore, when the public is more than ever insisting upon the most efficient transportation at the lowest practicable rates, it is of the highest importance that our railroads be enabled to adapt their organizations to meet these requirements most effectively.

Consolidation Should Be Voluntary

THE advantages to be derived from consolidations and the relatively little progress in their accomplishment during the period since the world war have led to the suggestion, particularly in the past two or three years, that the government should adopt compulsory measures to bring about consolidations.

Your Committee does not favor this suggestion. Not only is there serious question as to the constitutionality of compulsion but also it must be borne in mind that efforts to impose it would undoubtedly cause prolonged litigation and hinder rather than promote the desired ends.

On the other hand, we are approaching a period which promises to be favorable for securing desirable results by voluntary action. A considerable part of the country's railroads now find themselves in financial difficulties, not only as a result of the depression but also because of changes in transportation conditions that may be expected to continue, particularly the competition from other forms of transportation. There is, therefore, a special inducement at this time for railroads to seek economy and efficiency in every practicable way.

The advantages to the railroads from proper consolidations are such that, it is believed, the carriers can in their own interest be depended upon to take the initiative in bringing them about.

Your Committee recommends that the principle of voluntary consolidation of railroads should be preserved.

Past Governmental Policies Affecting Consolidation

IT IS pertinent to examine briefly the effects of past governmental policies upon the progress of railroad consolidation.

Prior to 1920 most of the larger railroad systems had been formed gradually by a natural process of combining large numbers of smaller

railroads, either by complete corporate merger or by acquisition of control, generally through stock ownership or lease. This process was subject to public control through the antitrust laws, but, although a number of proposed combinations were prohibited as in violation of those laws, substantial progress had been made toward grouping the railroads of the country into competitive systems. Twenty such systems controlled more than seventy per cent of the country's railroad mileage.

This grouping process, which was interrupted by the war, was, however, far from complete. Many individual railroads remained entirely independent of the main systems, while the form and extent of control exercised over lines belonging to the different systems varied widely. In some cases there was complete absorption into one corporation—in others control was exercised through rental or ownership of even a relatively small fraction of voting stock of a particular line. There were still 186 Class I railroads with separate identity, although nearly half of these were embodied in the twenty major systems. There were also about 1,000 Class II and Class III railroads (those having gross revenues less than one million dollars per annum).

Consolidation Provisions of Transportation Act, 1920

THE Transportation Act of 1920 contemplated an extensive scheme of railroad consolidation. The Interstate Commerce Commission was instructed to prepare a plan for division of all the railroads of the country into a limited number of strong competing systems. The Act removed the process of consolidation from the operation of the anti-trust laws but laid down the following conditions to govern the Commission in preparing the plan to which any proposed consolidation would be required to conform: (1) Competition was to be preserved as fully as possible, (2) existing routes and channels of trade and commerce were to be maintained wherever practicable and (3) the cost of transportation as between competitive systems and as related to the values of the respective railroad properties was to be the same as far as practicable.

These requirements were intended to bring about the formation of systems which would be on a reasonably equal footing from the competitive standpoint, and there was included in the general scheme the well-known "recapture clause," since repealed, which was intended to assist in bringing about the desired consolidations.

Difficulties with Comprehensive Plan

WHEN the Commission began formulating the required comprehensive plan, it soon became apparent that the task of remaking the railroad map of the United States at a single operation was almost beyond human possibilities. However, drafts of plans were early prepared by the Commission's experts, and in 1921 the Commission put forth its "tentative" plan providing for division of all the railroads into nineteen systems. In the hearings on this plan many objections were offered and the difficulties were seen to be so great that the Commission from 1925 to 1928 annually asked Congress to relieve it of the mandate to prepare a plan. A number of bills for this purpose were presented in Congress and extensively considered by committees, but no action was taken. Unable to obtain relief from the duty, the Commission in 1929 finally brought forth a "final" plan.

When the final plan was issued, providing for twenty-one systems, many of which differed widely from the nineteen systems of the tentative plan, it was soon seen to be far from a practical basis for grouping of all the country's railroads. Even the Commission's report making it public indicated the probability that it would require modification. In 1932 the Commission accepted an important change in the plan, making four instead of five systems in Eastern trunk-line territory as advocated by most of the railroads involved. For Western and Southern territories, except for the acquisition of the Cotton Belt by the Southern Pacific, the 1929 plan remains as issued and is generally recognized as far from satisfactory—in fact, it seems to be in considerable part unworkable.

Such progress as has taken place in this general field has not been through the operation of the comprehensive plan. The Chesapeake and Ohio system, although not contemplated in the Commission's tentative plan, was brought together, mainly through stock purchases or other acquisitions of control of the component lines, during the period from 1920 to 1929 preceding issuance of the "final" plan. The Commission recognized the propriety of this development by including that system in the final plan. Several other amalgamations worked out independently of the tentative plan, such as the acquisition of the Alton and the Buffalo, Rochester and Pittsburgh by the Baltimore and Ohio, were similarly adopted by the Commission in its final plan.

It thus appears that more actual progress has been made as a result of the natural developments on the initiative of the private interests

concerned than from the efforts at comprehensive planning by the government. As a matter of fact, this was to be expected, for the reason that the executives in responsible charge of businesses are generally much better qualified to work out practical plans than are government officials, even those belonging to such a highly regarded organization as the Interstate Commerce Commission. They are also more likely to limit their proposals to what is feasible of accomplishment and to avoid embarking upon schemes which have the effect of breaking down the natural initiative of the private interests concerned and stalling all action in the desired direction.

The experience with government attempts at comprehensive planning of railroad consolidation emphasizes the principle, which seems recently to have been somewhat lost sight of, that the function of regulating authority, such as the Interstate Commerce Commission, should be to pass upon proposals worked out by the interests concerned rather than to undertake in the first instance the working out of plans to govern those interests.

Aside from the difficulty of preparing at one time a single plan for all of the railroads of the country, a practical consideration is that the situation of the component railroads and their relative importance as parts of different systems is constantly changing. As a consequence a comprehensive plan, even if the best that could be devised at the time, is likely within a few years to become unworkable. In other words, railroads together with their allied transportation facilities are living, growing organizations which should be permitted to adapt themselves to changing conditions and render constantly improving service to the public.

*Your Committee recommends elimination of the requirement of the Interstate Commerce Act that the Interstate Commerce Commission shall establish and maintain a comprehensive plan for consolidation of the railways of the continental United States into a limited number of systems.**

Changes by 1933 Act

CERTAIN changes in the consolidation provisions of the Transportation Act were made by the Emergency Railroad Transportation Act of 1933.

* Messrs. Crooker, Howie and Marshall dissent from this recommendation. See their minority report, page 12.

Only complete corporate consolidations of railroads were subject to the foregoing requirements of the 1920 Act. These requirements did not apply specifically to acquisition of control through stock purchase, rental or otherwise than by complete corporate consolidation. Furthermore, holding companies not carriers in interstate commerce were beyond any control by the Commission and were used on a large scale in building up rival systems. The 1933 Act extended the Commission's jurisdiction to cover acquisitions of control by holding companies as well as operating railroads, and placed all forms of control under the same requirements as for complete corporate consolidation.

In addition to the Interstate Commerce Commission's general authority over railroad security issues, the 1920 Act prescribed that the securities of any system after consolidation should not exceed the valuation of the properties in the system as determined by the Commission. This requirement, together with the elaborate system of valuation of railroads which had been in progress since 1913, was repealed by the 1933 Act, without, however, affecting the Commission's general authority over security issues.

Authority to Approve Consolidations

OF THE remaining conditions laid down in the 1920 Act to govern consolidations, the requirement of balancing competitive systems as far as practicable with respect to cost of transportation as related to the values of the respective properties appears no longer necessary. The Interstate Commerce Commission, if required to pass upon proposed consolidation plans from the viewpoint of the public interest, will naturally see to it that no systems of excessive size and strength are created and that the rendering of efficient transportation service by other lines or systems on which different localities and sections of the country depend is not jeopardized.

The mandate of the 1920 Act as to maintaining existing routes and channels of trade and commerce as far as practicable will likewise be no longer necessary. The Commission in passing upon consolidation plans will necessarily take into account the public interest in maintaining existing routes and channels to the greatest extent compatible with economy and efficiency.

The question as to the extent to which competition should be preserved as between proposed consolidated systems calls for special consideration. The law since 1920 has required that, in the division of the

railways into systems under the comprehensive plan, "competition shall be preserved as fully as possible."

Any present consideration of this question must take into account the changes that have taken place since 1920. During this period highway transport has developed from practically nothing to an important factor in the country's general transportation system. There has been a substantial revival of commerce on the inland waterways and the intercoastal traffic has multiplied many times. Air transport has also been inaugurated and increased rapidly. Obviously any aspect of monopoly has disappeared from a large portion of railway business. The natural interest of shippers and the general public in the lowest possible rates and fares is largely shared by the carriers. Elimination of duplication and unnecessary costs in rendering of service has therefore, from every viewpoint, assumed importance overshadowing that of maintaining competition between railroads.

Furthermore, it is to be borne in mind that, as railroads have widened the extent of their operations through use of other forms of transport, there has been an increase in the overlapping of the areas served by different systems and hence an accentuation of competition between them. With this natural increase in competition at work it becomes less necessary to maintain competition artificially between the rail systems by action of public authority.

These conditions only serve to accentuate the need for solution of the problem of excessive competition in those areas where a number of lines render parallel service between the same centers and engage in a struggle for traffic inadequate to support them all. Every effort should be made to meet such problems constructively by building up traffic through increased efficiency and attractiveness of service, but a complete solution of many situations clearly requires some degree of consolidation among competing lines.

Taking account of the changes outlined and also the financial necessities of the railways as a whole, it has been suggested that all competition among railways should be eliminated and that they should be consolidated into regional systems or even into a single system for the whole country. Your Committee does not favor such a sweeping change for the entire rail system, although there may be some areas where regional consolidation will be desirable. It does not seem wise to abandon entirely the principle of competition which has produced such remarkable improvements in our railway service.

Reasonable reduction of competition, to such extent as is necessary to permit the railroads to accommodate themselves to changed conditions and to secure the greatest practicable economy and efficiency in their operation, is obviously desirable.

Your Committee recommends that, with a view to eliminating unnecessary and wasteful competition among railroad systems and furthering efficiency of service, railroads be permitted and encouraged to effect consolidations, subject to approval of the Interstate Commerce Commission as to the public interests involved.

LEE J. DOUGHERTY, *Chairman*

CHARLES F. CONN

GEORGE L. CROOKER *

GEORGE H. DAVIS

PIERPONT V. DAVIS

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ERIC A. JOHNSTON

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ERSKINE RAMSAY

FRED W. SARGENT

HARRY A. WHEELER

January 30, 1936.

* See minority report, page 12, on Committee's recommendation for elimination of comprehensive plan.

Minority Report by Messrs. Crooker, Howie and Marshall on Committee's Recommendation for Elimination of Comprehensive Plan

THE Committee report contains a recommendation reading as follows:

Your Committee recommends elimination of the requirement of the Interstate Commerce Act that the Interstate Commerce Commission shall establish and maintain a comprehensive plan for consolidation of the railways of the continental United States into a limited number of systems.

The undersigned members of the Committee do not concur in the recommendation above quoted and beg leave to submit the following statement of their reasons for dissenting from said recommendation.

1. Governmental policy as expressed in Transportation Act, 1920, amended by Emergency Act, 1933, favors unification of rail carriers into a limited number of systems.*

Transportation Act, 1920, provided three methods of unification: By acquisition of property under Section 1(18); by acquisition of control by purchase of stock or under lease or in any manner not involving consolidation (as legally defined) under Section 5(2); and by consolidation as provided in Section 5(6). The carriers affected by any order of the Commission under any of these provisions were relieved from the operation of the antitrust laws by Section 5(8). The Commission was required to prepare and adopt a plan for consolidation of the railroads into a limited number of systems (paragraphs 4 and 5) and the plan was required to conform to certain general specifications (paragraph 4). These requirements were obviously designed to protect the public interest. It was believed that without these safeguards (and the recapture clause since repealed) the stronger carriers would seek control of the other desirable properties and leave the weaker ones unattached. Acquisitions of property under Section 1(18) and acquisitions of control under Section 5(2) were not required to conform to the Commission's consolidation plan, whereas consolidations under Section 5(6) were specifically required to be in harmony with and in furtherance of such plan. The Emergency Act, 1933, grouped together in new paragraph 4 all of the methods of unification theretofore covered by the separate provisions enumerated above, and specifically provided that any such acquisition, et cetera, must conform to

* The term "unification" is used to embrace any form of acquisition of control of one rail carrier by another under which unified operation, in whole or in part, could be accomplished.

the Commission's consolidation plan. The Emergency Act also eliminated the requirement that the par value of securities issued by a consolidated corporation should not exceed the value of the consolidated properties as determined by the Commission.

Reverting to the specifications of paragraph 4 that in preparing (or modifying) the complete plan competition should be preserved as fully as possible and wherever practicable the existing routes and channels of trade and commerce shall be maintained, it will be noted that the interpretation of these requirements was left wholly to the Commission's discretion. There was extensive argument of the questions involved in proceedings before the Commission, beginning with Professor Ripley's report on the tentative plan. In modification of the plan in Eastern Territory (185 I. C. C. 403) the Commission said it is evident that the competition Congress desires to have preserved is healthful competition, because any other kind of competition can not be in the public interest and any existing routes and channels which promote unhealthful competition need not be maintained. The modified plan for Eastern Territory and the Commission's decisions in numerous cases clearly show that these specifications need not prevent, and generally speaking have not deterred, the Commission from approving unifications found to be in the public interest.

2. Progress toward the formation of unified systems has been substantial.

The railroads began at once to unify their systems by proceedings under Section 5(2). (*Pittsburgh & W. Va. Ry. Co.*, 70 I.C.C. 682, 266 U. S. 640; *Chesapeake & O. Ry. of Indiana Lease*, 70 I.C.C. 694; *Pittsburgh, C., C. & St. L. R. Co. Lease*, 72 I.C.C. 128; *Grand Rapids & I. Ry. Co. Lease*, 72 I.C.C. 260.) The Commission authorized the Southern Pacific to lease the Central Pacific, thereby relieving the former from complying with a decree of the Supreme Court under the Sherman Act, on condition that the lease would be terminated by order of the Commission if found to interfere with consummation of the final plan of consolidation when promulgated by the Commission (*Central Pac. Ry. Co. Control*, 76 I.C.C. 508).

The Commission disapproved a number of applications under paragraph 2 as not being in the public interest or because it was unable to approve the financial aspects (*Nickel Plate Unification*, 105 I.C.C. 425; *Lease of Virginian Ry. by Norfolk & Western*, 117 I.C.C. 67; *Lehigh & N. E. R. Co. Lease*, 124 I.C.C. 81; *Southwestern Lines*

Unification, 124 I.C.C. 401; *Erie R. Co. and Pere Marquette Ry. Co. Control*, 138 I.C.C. 517; *Buffalo, R. & P. Ry. Co. Control*, 131 I.C.C. 750). All of these cases were contested. The Commission had to decide them on the record as made at the hearings. On the other hand, the Commission approved a great many applications. An incomplete summary for the period 1921 to 1934 shows that it authorized acquisitions of control under paragraph 2 in 388 cases affecting 63,524 miles of railway, and acquisitions of property and/or operation under Section 1(18) in 482 cases affecting 34,156 miles of railway, making a total of 870 cases affecting 97,680 miles of railway. These figures include an unknown amount of duplications.

The Commission approved acquisition of control by Great Northern Pacific Company of the lines of Great Northern and Northern Pacific (*Great Northern Pac. Co. Acquisition*, 162 I.C.C. 37), but imposed a condition respecting ownership of the Burlington stock by the North-erns. It approved acquisition of control of St. L.-S.W. Ry. by Southern Pacific upon conditions requiring the maintenance of existing routes (*Control of St. L.-S.W. by Sou. Pac.*, 183 I.C.C. 663). Important public interest questions were involved and both cases were contested.

The Commission approved modifications of its plan affecting carriers in Eastern Territory (185 I.C.C. 403). The report in this case affords ample evidence of the extent of public interest in the proceeding and public opposition to certain of the proposals and the extent to which the Commission responded thereto in making changes in the plan designed to preserve railroad competition for the communities protesting.

3. *Progress of unification has been retarded, if at all, by questions of public interest in individual cases, not by the letter or the spirit of the law.*

The Commission declined to hear applications for consolidation in advance of the adoption of a plan, but this did not prevent unifications under the other provisions of the law. In 1925 the Commission recommended that paragraphs (2) to (6) inclusive be amended: (a) by omitting the requirement that the Commission adopt and publish a plan, (b) by making unlawful any acquisition of control without the Commission's approval, (c) by giving the Commission broad powers to approve or disapprove, (d) by giving the Commission specific authority to disapprove any unification proposal on the ground that it does not include a carrier which ought to be included in the public interest, (e) by modifying the requirement respecting the value of

consolidated properties in relation to their capital, and (f) by authorizing the Commission to use the results of its investigation in preparation of a plan in deciding future cases. These proposals meant that the Commission would have a private, not a public, consolidation plan. It recognized the necessity of having a plan and power to enforce adherence thereto. Congress did not act on these proposals. From 1925 to 1929 the Commission continued to approve unifications, using its power of disapproval to impose conditions upon applicants (especially in cases where approval appeared necessary to relieve applicants from operation of antitrust laws), requiring them to take steps toward the acquisition of independent short lines or weak railroads which under a comprehensive plan should be included somewhere in the consolidated systems. (*New York Central Unification*, 150 I.C.C. 278; *Central Pac. Ry. Co. Control*, supra.)

In 1929 the Commission noted (Annual Report December 1, 1929) the activities of holding companies in acquiring control of carriers in a common interest. These developments evidently moved the Commission to adopt and publish a plan, in order that it might under existing laws take action to preserve and protect the plan. The Commission then made recommendations to strengthen the law and the Emergency Act, 1933, gave the Commission all necessary powers to that end.

In the meantime, the Commission started Clayton Act proceedings respecting acquisitions of control of the Wabash, Lehigh Valley, Wheeling & Lake Erie, and Western Maryland. All of these carriers were brought together in one system in the Commission's consolidation plan of December 9, 1929.

It must be assumed that the acts of the Commission in disapproving unification proposals, in approving applications subject to conditions imposed, in issuing orders to cease and desist from violations of the Clayton Act, in adopting and publishing its consolidation plan of 1929, and in recommending the changes in the law which were adopted in Emergency Act, 1933, were intended to protect the public interest and responsive to the consensus of public opinion as evidenced by representations of civic and commercial organizations in numerous proceedings before the Commission.

The record of the hearings upon application to modify the Commission's plan in Eastern Territory affords ample proof of public interest in the Commission's plan. There were a large number of inter-

veners, including states, municipalities, public service commissions, chambers of commerce and other commercial organizations, and several railroads within and without the territory involved. Almost without exception the basis of protest was the alleged need for preserving competition as between railroads as affecting the communities represented. The Commission acted favorably on several of these protests. In general it was apparent that the public, in so far as it was represented in this proceeding, was more concerned about the preservation of competition than in the effectuation of unifications.

The history of the development of railroad unifications from 1920 to 1934 would seem to indicate that unification plans progressed about as rapidly as the impact of public opinion upon the Commission's administrative policies would permit.

4. Present laws do not impose legal obstacles to unifications shown to be in the public interest.

The plan required by paragraphs 4 and 5 (present 2 and 3) has been prepared and adopted. Since adoption it has been modified in a general proceeding (*Eastern Territory*, 185 I.C.C. 403) and in special proceedings (*Control of St. L.-S.W. by Sou. Pac.*, supra). The plan can be changed at any time upon application or by the Commission upon its own motion, after hearing. Certainly the plan should be changed whenever necessary to permit a unification found to be in the public interest. In determining public interest questions the Commission will necessarily consider the effect of any proposed change upon the plan as a whole and may impose such conditions as necessary to preserve the general principles.

The Commission's plan as it now stands presents many opportunities for proper unifications in harmony therewith which have been advocated by interested railroads and which have met the test of public interest as indicated by the Commission's approval of the plan after public hearings. There are objections to some of the Commission's groupings, which must be tried out in general or special proceedings to determine where the public interest lies.

The existing requirements respecting the plan are not obstacles to progress in the sense that proper unifications are being held up pending removal of these obstacles. There is no flood of applications being impounded back of the dam. The cause of the lag in unification procedure is easily found elsewhere than in the requirements of the law.

5. It is necessary for the Commission to have a comprehensive plan in order that all railroads, including short lines and weak lines that are necessary to serve the public, may not be left out of the resulting systems.

Transportation Act, 1920, simply required the Commission to prepare and adopt a plan for consolidation of the railways into a limited number of systems. There was no specification as to the number. Professor Ripley considered whether the systems should be continental in range or conform to territorial divisions of the country. He thought it was important that the scope of the systems should correspond roughly to the rate-making areas and statistical divisions resulting from long experience. He decided in favor of regional systems conforming as nearly as may be to the requirement that competition should be preserved as fully as possible. The publication of the tentative plan served to illustrate the conclusion that might be reached as to the meaning of the term "limited number of systems."

It seemed apparent from the beginning that the consolidation of two or more powerful carriers within a region might at once foreclose the possibility of having as many as two evenly balanced systems in that region. Likewise, the acquisition of one carrier by another would necessarily raise a question as to what disposition should be made of other competing and connecting carriers.

Since the whole process of unification was to be voluntary and the Commission had no power to enforce its plan except by withholding its approval of voluntary proposals, it was clear that the Commission could not intelligently deal with applications coming before it without having a general plan providing for the allocation of every railroad, including short lines and terminal properties.

As already noted, when the Commission proposed that it be relieved of the duty of adopting a complete plan it asked for authority to use the results of its investigation and for specific authority to disapprove proposed unifications on the ground that they did not include any carrier which ought to be included in the public interest. Obviously, the Commission could not exercise such authority without having a complete plan.

6. If the Commission is to have a plan for its guidance, it is necessary in the public interest that such plan be published and that both the public and the railroads shall have the right of petition for modifications thereof after public hearing.

If the law should be amended by striking out the requirement that the Commission prepare and adopt a plan, the Commission would undoubtedly retain the records of its investigation made in preparation of the plan and ask for specific authority, as it did in 1925, to disapprove any proposed unification on the ground that it does not include any carrier which ought to be included in the public interest. Even if such specific authority were not granted by Congress, the Commission would still find it necessary to have a plan to guide its judgment in protecting the public interest and in granting authority for unifications which would relieve the applicants of the operation of the anti-trust laws.

The policy of the present law is to control the process of unification in the public interest. This control must be exercised by the Commission. Effective control necessarily involves the formulation of general principles and a tentative allocation of each railroad (including short lines) to its place in the general scheme, subject to change as conditions may warrant. Since it is necessary for the Commission to have a plan, it is highly desirable that such plan should be published so that the public and the railroads may know what it is, and that it shall be modified from time to time in formal proceedings, giving all interested parties an opportunity to be heard.

Conclusion

THE conclusion follows, from the premises stated, that the present law, including the requirement that the Commission shall prepare and adopt a consolidation plan, clearly tends to promote unification of rail carriers into a limited number of systems and does not present any legal or practical obstacles to the effectuation of unifications found to be in the public interest. We think that the requirement that the Commission shall prepare and adopt a consolidation plan is necessary and desirable in the public interest and, therefore, oppose the above quoted recommendation of the Committee.

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